Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 01-92
Developing a Unified Intercarrier	)	
Compensation Regime	)	

COMMENTS OF THE COALITION FOR CAPACITY-BASED ACCESS PRICING

May 23, 2005

TABLE OF CONTENTS

Summary

The Coalition for Capacity-Based Access Pricing (CCAP) is a group of rural and non- rural incumbent local exchange carriers (ILECs) that believe the Commission needs to reform the existing intercarrier compensation regimes as quickly as possible and in a manner that continues to ensure that all carriers utilizing the public-switched telecommunications network (PSTN) pay for the privilege, in an equitable manner. Today, advances in technology are providing Americans with numerous choices with respect to their telecommunication needs. The rapid growth and acceptance of Internet Protocol (IP)-based services is placing a tremendous strain on the existing, per minutes-of-use-based intercarrier compensation regimes. The IP technology world is one of data packets that does not recognize the jurisdictional boundaries prevalent in today's minutes-of-use-based Calling Party Network Pays (CPNP) intercarrier compensation regimes. The CCAP believes that some form of intercarrier compensation needs to be maintained as the telecommunications marketplace becomes more competitive, especially for rural carriers. The need for continued payments by carriers utilizing the networks of other carriers is critical to maintaining the viability of the nation's PSTN and insuring the continued availability of basic and advanced telecommunications services to all Americans, at affordable rates.

The CCAP supports and urges the Commission to adopt a unified, intercarrier compensation regime that reflects a capacity-based, connection charge to be paid by all carriers wishing to connect to the PSTN as described in the Home/PBT Plan contained in the Notice. Any reform efforts that are based on the concept of bill and keep should be rejected by the Commission. In addition to connection-based charges, the CCAP

supports the creation of a bulk-billed access charge recovery mechanism that will reflect the above average costs of connecting to the PSTN. The bulk-billed access charge mechanism or High Cost Connection Fund (HCCF) would be non-portable. In addition to reflecting a carrier's embedded costs over and above those reflected in the connection charge, the HCCF would also reflect dollars currently obtained through the federal local switching support (LSS) and interstate common line support (ICLS) high-cost funds as well as any residual interstate access support (IAS) amounts of participating carriers. Funding of the HCCF would be based on activated telephone numbers that all carriers would be required to receive from the North American Numbering Plan Administrator (NANPA) in order to originate and terminate calls via the PSTN.

In order to reform the myriad of existing intercarrier compensation regimes, the Commission must succeed in unifying the intrastate and interstate jurisdictions. Absent such unification, the Commission would not be able to achieve success in reforming intercarrier compensation. The CCAP believes that the Commission and the states should work in a collaborative effort to address the differences that currently exist with regard to intercarrier compensation rates and policies. While the CCAP believes that intercarrier compensation charges need to be unified for exchange access and usage subject to reciprocal compensation, the Commission should allow for the continued use of tariffs (to reflect capacity charges for exchange access traffic) and interconnection agreements (for traffic subject to reciprocal compensation).

Networks cost money to build and operate and no carrier should be given a free ride to use another carrier's network. Instead, the CCAP believes that a capacity-based intercarrier compensation mechanism can operate within the existing regulatory framework that a minutes-of-use-based approach has been operating under since 1984 when the access charge regime was established. The CCAP believes that the Commission should adopt an embedded cost standard for use in the development of capacity-based connection charges and the HCCF. With regard to forward looking costs, the Commission should utilize its authority to forbear the use of such costs in the development of capacity charges and the HCCF. In addition, the Commission should retain the exiting Part 32 accounting, Part 36 separations and Part 69 access rules that are currently utilized by rate of return ILECs. Moreover, any reform to intercarrier compensation should not eliminate the existing pooling mechanism, unitary rate-of-return and dialing parity rules that have assisted in ensuring that rate of return carriers can fulfill carrier of last resort obligations so that all Americans continue to have access to affordable basic local exchange service.

The CCAP does not believe that increasing the existing subscriber line charge caps is in the public interest. In addition, rate-of-return carriers should not have any additional financial obligations imposed upon them or their subscribers as a result of a carrier wishing to establish a point of interconnection (POI) outside the local service area of the rate-of-return carrier. The Commission must affirm that competitive carriers are required to establish a POI within the existing local calling areas of rate-of-return LECs for the exchange of local traffic. ILECs should not have the financial burden of delivering 251(b)(5) traffic to competitive carriers and Commercial Mobile Radio Service (CMRS) providers that have established out-of-area POIs. Furthermore, any reform to the existing intercarrier compensation regimes should not require a change in the existing meet points of rate-of-return carriers for the origination or termination of exchange access traffic.

The Commission must determine that transiting is a function subject to regulation and at rates that are cost-based, not market-based. The CCAP believes that while indirect interconnection may be an alternative means for carriers to interconnect, especially for small levels of PSTN traffic, it should not impose an additional financial obligation on ILECs to deliver traffic, subject to reciprocal compensation or exchange access, beyond the ILEC's certificated local service area or existing meet points.

The CCAP believes that intercarrier compensation reform should begin as quickly as possible and that carriers, wishing to do so, can elect to move to a capacity-based mechanism via an annual election process over the next three to five years. In addition, the CCAP urges the Commission to take into consideration any recommendations made by the Federal State Joint Board on Universal Service and any decisions made in the IP-based services proceeding as the intercarrier compensation reform process moves forward.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 01-92
Developing a Unified Intercarrier	)	
Compensation Regime	)	

COMMENTS OF THE COALITION FOR CAPACITY-BASED ACCESS PRICING

Pursuant to Federal Communications Commission (FCC or Commission) Rules 1.415 and 1.419,[1] the Coalition for Capacity-Based Access Pricing (CCAP) hereby provides its comments to the FCC's Further Notice of Proposed Rulemaking (FNPRM) in the above captioned proceeding.[2] In this proceeding the Commission has announced that it seeks comment on replacing the existing intercarrier compensation regimes with a unified regime designed for a more competitive and technology-driven marketplace. While at the outset of the FNPRM the Commission indicates that it is beginning the process of intercarrier compensation reform, the Commission correctly notes that the process for reform of the existing intercarrier compensation regimes was initiated back in 2001.[3]

The CCAP represents a group of non-rural and rural incumbent local exchange carriers (ILECs) that are very interested in the issue of intercarrier compensation reform

---

1 47 CFR §§1.415 and 1.419.

2 *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, FCC 05-33, rel. Mar. 3, 2005 (FNPRM).

3 *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001) (NPRM).

and support a capacity-based connection approach as described in the Home/PBT plan contained in the FNPRM. The CCAP is composed of both commercial companies and cooperatives that range in size from approximately 5,000 to 125,000 access lines. All of the ILEC member companies have been designated as eligible telecommunications carriers (ETCs) by their respective state regulators, are rate-of-return regulated in the interstate jurisdiction and participate in the interstate common line pool administered by the National Exchange Carrier Association (NECA). Some of the CCAP member companies participate in NECA's traffic-sensitive (TS) pool, and some of the companies maintain their own TS rates with the Commission. Most of the member companies settle with NECA or file their interstate TS rates on a cost basis while some companies settle with NECA based on the interstate average schedules.

I. Introduction

The matter of intercarrier compensation reform is by far, one of the most important and critical subjects that the Commission has undertaken in recent memory. The Commission has a unique opportunity to restructure the myriad of existing intercarrier compensation regimes into a clear and cohesive set of rules and standards that will guide and foster the future development of the competitive telecommunications marketplace, provide consumers with new service offerings at reasonable prices and continue to uphold the universal service standards so critical to insuring continued access to affordable basic local services for all Americans. Make no mistake, a great deal is at stake with regard to reforming the existing intercarrier compensation regimes. If the Commission gets it right, a reformed intercarrier compensation regime will lead to continued and uninterrupted development of technologies and services that will benefit all Americans. However, if the Commission fails to act, or acts unwisely, with regard to intercarrier compensation reform, there may be segments of the populace that may never gain access to the advanced level of services that are available today. Moreover, failure by the Commission to consider all aspects of intercarrier compensation reform could result in a lesser quality of service and higher prices for customers residing in the more rural areas of the nation.

In the FNPRM, the Commission seeks comment on numerous issues pertaining to intercarrier compensation reform. In addition to commenting on the plans and principles filed by various industry groups, the Commission seeks comment on legal matters, interconnection issues, cost recovery and implementation issues associated with reform of the existing intercarrier compensation regimes. Moreover, the Commission seeks comment on transit service and Commercial Mobile Radio Service (CMRS) issues. On an individual basis, each of the issues found in the FNPRM is of great significance to the goals of reforming intercarrier compensation. Taken together, the issues presented by the Commission in the FNPRM create a formidable undertaking for any one entity to comment on and do justice to the process.

The CCAP recognizes that as daunting of a challenge as the issues present, the process of reforming intercarrier compensation must be undertaken in a comprehensive manner. Accordingly, the CCAP notes two important and critical matters that the FNPRM does not address or note. The first of these matters is the status of the activities of the Federal-State Joint Board on Universal Service that has been tasked with recommending changes to the existing methodology for calculating and distributing universal service support to rural ILECs.[4] The second issue that the FNPRM does not address is the ongoing proceeding with respect to IP-Enabled Services that the FCC has undertaken to determine, among other things, the applicability of the existing access charge and universal service rules to IP-based service providers.[5]

The CCAP believes that it is most difficult, if not impossible, to complete the process of reforming the existing intercarrier compensation regimes without taking into consideration the future of the existing universal service mechanisms and whether or not a growing segment of the competitive voice services market consisting of IP-based service providers will be required to contribute to the on-going maintenance and long-term viability of the existing public switched telecommunications network (PSTN) and universal service programs. The CCAP believes that any reform to the existing intercarrier compensation regimes should not be finalized until such time as the Federal State Joint Board on Universal Service has made its recommendations to the Commission, the Commission has sought comment on any universal service reform proposals, and the Commission has determined the extent to which IP-based services and the providers of such services will be subject to a revised and unified intercarrier compensation regime.

---

4 *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 04-125, rel. June 28, 2004; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Public Notice, FCC 04J-2, rel. Aug. 16, 2004.

5 *See IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, FCC 04-28, rel. Mar. 10, 2004.

II. The Need For Reform

A. An Intercarrier Compensation Regime Based Exclusively On Minutes-of-Use is Not Sustainable

Notwithstanding the ongoing activities of the Joint Board on Universal Service and the ongoing proceeding with regard to IP-based services, the CCAP strongly believes that the existing, minutes-of-use-based intercarrier compensation regime is in need of reform. In today's calling party's network pays (CPNP) intercarrier compensation regime, carriers are compensated for use of their networks based on the existing access charge regime or via the reciprocal compensation mechanism established pursuant to Section 251(b)(5) of the Telecommunications Act of 1996, as amended (Act). For the CCAP, a significant portion of each member company's regulated revenues comes from the minutes-of-use originating and terminating access charges paid by interexchange carriers. In calendar year 2004, each CCAP member company received, on average, twenty-eight percent of its regulated revenues in the form of state and interstate switched access revenues. For the same period, additional but smaller amounts of revenue were derived in the form of reciprocal compensation.

The advent of IP-based technology and the continued problems of arbitrage associated with the differing rates under the existing intercarrier compensation regimes have contributed to uncertainty in the level of network access and reciprocal compensation revenues for the CCAP member companies. The situation will only become worse as IP technology continues to be utilized by carriers to handle traditional voice traffic and the disparity in existing intercarrier compensation rates continues to diverge. Many of the CCAP member companies operate in service areas where at least one traditional cable television (CATV) provider also operates. Many of the CATV providers have either completed upgrades to their facilities in order to provide two-way voice communications utilizing IP technology or are in the process of doing so. In most cases, the CATV providers have built or upgraded their facilities to provide IP-based telecommunications services in the more densely populated areas of the ILECs' service areas. In the areas served by the CCAP member companies, none of the CATV providers have built facilities in order to reach all subscribers residing in the CATV providers' service areas. Typically, the CATV providers offer their existing video customers a bundle of services that usually includes a fixed number of minutes that the customer can use to make long-distance calls at no additional per-minute charge unless the customer exceeds his or her base amount of minutes.

The bundled calling plans being offered by CMRS and CATV providers are very popular with retail customers, and the CCAP supports the ability of all carriers to develop retail service offerings that appeal to their customers, so long as these providers recognize their obligations to support the universal service funds and pay carriers for the use of the carriers' facilities utilized to complete a call. Unfortunately, competitive providers such as CATV and CMRS providers often believe that their only obligations are to their retail customers and not to other carriers that enable them to offer their competitive services in the first place. For example, many CATV providers take the position that all calls utilizing IP technology are not subject to the existing minutes-of-use-based access charge regime, even when such calls terminate to customers via the PSTN. Even traditional service providers have attempted to argue that long distance calls utilizing an IP-based transport function are not subject to access charges.[6] Moreover, a number of CATV providers are relying on a recent FCC decision to argue that IP-based service offerings are not subject to state commission certification and tariff requirements.[7]

In addition, as CCAP members have deployed broadband facilities, these very same facilities are enabling providers such as Vonage to capture minutes off the PSTN by offering bundled, flat rate calling plans. The problem confronting the existing intercarrier compensation regime is not simply one of competition eroding minutes. The problem is much more fundamental; it is a problem of network evolution. Quite simply, the rise of packet networks, which are not minutes-of-use price sensitive, destroys the ability to maintain minutes-of-use pricing on the traditional PSTN. As such, either the pricing regime of the traditional network must be forced onto the new packet network or the pricing of the traditional network must conform to the new network. The CCAP proposes the latter. Rather than attempting to force a minutes-of-use type compensation mechanism for new technologies such as IP, adoption of a capacity-based intercarrier compensation mechanism can function well in both a packetized and traditional circuit-switched network.

B. Measuring Minutes-of-Use Is Becoming More Difficult

Changes in technology and differences in switched access rates among jurisdictions and types of traffic have made it difficult for ILECs to continue to identify minutes of use by jurisdiction and by carrier. The migration of voice traffic away from

---

6 *See Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, FCC 04-97, rel. Apr. 21, 2004.

7 *See Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267, rel. Nov. 12, 2004 (*Vonage Order*).

the traditional circuit-based PSTN to IP technology in the form of data packets will only exacerbate the situation. The issue of not being able to identify and measure all minutes of use is especially problematic on the terminating side. Given the fact that many ILECs subtend a tandem office, usually owned and controlled by a Regional Bell Operating Company (RBOC), the ILECs must rely on the tandem provider to provide them with timely and accurate billing records for traffic that is subject to either a terminating access charge or a reciprocal compensation charge. The trunk facilities between tandem providers and subtending ILECs, often referred to as "common" trunks, typically carry all types of traffic destined for subscribers served by the subtending ILEC. In most cases, the subtending ILEC has no means of determining the carrier of the originating party who placed the call without detailed records from the tandem provider. In many cases, the tandem provider does not provide the subtending ILEC with the detailed records required by the ILEC to identify and bill the appropriate carrier based on either tariff access charges or reciprocal compensation charges pursuant to an interconnection agreement.

The lack of adequate and complete records has been an issue with regard to the legacy circuit-based PSTN for a number of years. Today, IP-based service providers typically have arrangements with interexchange carriers (IXCs), competitive LECs (CLECs), or RBOCs to terminate IP-originated calls on the PSTN. In many cases, ILECs that subtend a tandem office have no way of knowing if the call detail records received from the tandem provider for usage traversing the common trunks includes records for all terminating traffic and whether the appropriate distinction between a call subject to either a state or interstate terminating access charge or reciprocal compensation charge has been made. The matter of being able to identify the jurisdiction of an IP-based originating call was recently addressed in the FCC's Vonage Holdings Order.[8]

The industry often refers to unidentified terminating traffic as "phantom" traffic, and a great deal of time has been spent by industry groups to determine the scope of the phantom traffic problem, and the steps that can be taken to insure that terminating carriers are adequately compensated for the use of their networks in accordance with the existing intercarrier compensation regimes. The CCAP supports the recommendations put forth by the EPG including implementation of truth-in-billing guidelines, establishment of default termination rules and rates and elimination of the exemption on the payment of access charges by ISPs that terminate traffic to the PSTN.[9]

C. Fulfillment of Carrier of Last Resort Obligations

While the CCAP supports all efforts to insure the payment of appropriate compensation in accordance with the existing intercarrier compensation regimes, the ability to do so will only continue to get more difficult as technology continues to evolve. In addition, the differences that currently exist in jurisdictional switched access charge rates[10] and reciprocal compensation rates will continue to drive carriers to tariff shop or look for the cheapest way to terminate their retail customer originated traffic. Even if the Commission is successful in unifying the myriad of existing intercarrier compensation

---

8 *See Vonage Order* at para. 18.

9 *See* FNPRM at para. 45.

10 *See* FNPRM at para. 107 citing *Letter* from Scott Reiter, National Telecommunications Cooperative Association (NTCA), to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 7 (filed Jan. 7, 2004) ("According to NTCA, rural LECs receive on average, 10 percent of their revenue from interstate access charges and 16 percent from intrastate access charges. In comparison, it asserts that the BOCs receive only four percent of their revenue from interstate access charges and six percent from intrastate access charges").

rates, the current difficulties faced by ILECs in obtaining adequate and accurate records for billing purposes will persist.

The inability of rate-of-return ILECs to receive appropriate intercarrier compensation in accordance with the existing intercarrier regimes will make it more difficult for these ILECs to maintain their carrier of last resort (COLR) obligations. The amount of access-related revenues received by ILECs for use of their networks, when combined with basic local service and universal service revenues, help insure that any customer requesting basic local exchange service in an area served by a rate-of-return ILEC will be able to obtain such service at an affordable rate. While competitors have the ability to enter and exit both rural and non-rural markets, as economic circumstances may dictate, the carrier serving as the COLR is required to provide basic local exchange telephone service upon request. For example, when a customer subscribing to the basic local exchange service of an ILEC decides that he wants to switch providers and move to the bundled service offering of his CATV provider, the ILEC does not remove the facilities established to the customer's premises. Common business principles would suggest that the removal, or abandonment, of the facilities might be advantageous, but the COLR obligations of the ILEC dictate that the facilities must remain in place should the customer later choose to disconnect the telecommunications service of the CATV provider. Moreover, COLR obligations require the ILEC to provide facilities to any customer requesting service anywhere within the ILEC's service area. Very few, if any, CATV providers would undertake such an obligation given the vast geographic and sparsely populated areas generally served by rural, rate-of-return ILECs.

For the CCAP member companies, revenues derived from existing switched access rates at both the state and interstate levels, when combined with universal service fund revenues, equate, on average, to fifty percent of regulated revenues. The combination of switched access and universal service revenues allows rate-of-return ILECs to maintain their COLR obligations and to provide their subscribers with affordable basic local exchange service. To the extent that switched access revenues decline due to existing arbitrage opportunities and growth in IP-based telecommunications services, rate-of-return ILECs will have difficulty maintaining their COLR obligations and the ability to offer affordable basic local exchange service to all customers.

D. The Fallacy of Bill and Keep

The CCAP urges the Commission to avoid implementation of a bill and keep regime as provided in the plan filed by the ICF. Since the initial NPRM in 2001, there has been much discussion of the concept of bill and keep as a replacement for the existing intercarrier compensation regimes. While the concept of bill and keep seems simple and fairly harmless on the surface, deeper reflection reveals many theoretical flaws. First, a bill and keep regime is based on an underlying assumption that costs between networks are roughly equal and traffic is exchanged in roughly equal quantities. Neither of these assumptions rings true in the real world. In reality, costs differ greatly between networks and traffic between carriers is more often out of balance.

An even bigger flaw associated with the concept of bill and keep is that it requires the entity investing and building the network to surrender it for free to third parties wishing to utilize the network. Such a process does not encourage those wishing to invest in building or upgrading their networks to do so. In fact, it would actually act as a disincentive to such investment. In the end, bill and keep is bad public policy, and the Commission should not approve any intercarrier reform plan that calls for a mandatory bill and keep mechanism.

III. The Need for a Capacity-Based Intercarrier Compensation Regime

The CCAP believes the time is right for the Commission to give serious consideration to an intercarrier compensation regime based on capacity, rather than minutes of use. The CCAP is not suggesting that the Commission immediately order a flash-cut to a capacity-based intercarrier compensation regime. To the contrary, the CCAP recognizes that a capacity-based and minutes-of-use-based intercarrier compensation regime will need to coexist for an adequate period. However, the CCAP believes that as time progresses and the telecommunications marketplace continues to migrate to IP-based services, an intercarrier compensation regime based on capacity-based charges will be the only practical means for maintaining a viable and long-term intercarrier compensation regime.

A. Components of a Capacity-Based Regime

The CCAP supports the principles contained in the Home/PBT plan as described in the FNPRM. In broad terms, the plan calls for the creation of a fixed-rate, non-jurisdictional capacity-based fee for connecting to the local public telephone network. The fee for connecting to the local network would be capped at a benchmark level that is tied to the average business retail rate. The plan thus eliminates existing access minutes-of-use charges associated with intercarrier compensation and reciprocal compensation. In addition, a critical component of the plan is the realignment of original intercarrier compensation revenues such as interstate common line support (ICLS) and local switching support (LSS) now residing in the federal high-cost USF programs, as well as similar support programs at the state level.

To the extent that the new flat-rate connection fees fail to offset existing intercarrier compensation revenues and the intercarrier compensation revenues previously moved into state or federal universal service funds, carriers would be allowed to increase subscriber line charges up to the current capped amounts. If a revenue shortfall continues to exist after increases in subscriber line charges (SLCs) to existing capped levels, carriers could agree to participate in a voluntary pool that would collect the shortfall from a bulk-billed access fund supported by an assessment on working telephone numbers.

The CCAP believes that pricing connections to a carrier's network based on the level of capacity required is a more efficient, more economic and simpler method for maintaining the long-term viability of an intercarrier compensation regime. The key components to a capacity-based intercarrier compensation mechanism include a connection charge for access to a carrier's network, a tandem connection charge and a bulk-billed access charge mechanism (hereinafter referred to as a High-Cost Connection Fund, or HCCF).

B. The Connection Charge

A capacity-based intercarrier compensation regime would eliminate the need for ILECs to continue to track originating and terminating minutes of use on their networks for purposes of receiving compensation from IXCs, CMRS providers, CLECs and other providers of telecommunications services. As previously stated, measuring minutes of use, especially with regard to terminating usage, has become a major obstacle in insuring that rate-of-return ILECs receive appropriate compensation in accordance with the existing intercarrier compensation regimes. A connection charge based on various levels of capacity needed by carriers to meet the calling demands of their retail customers is a more efficient and simpler method of determining intercarrier compensation obligations.

In accordance with the provisions described in the Home/PBT Plan, all carriers providing telecommunications services to subscribers would be required to obtain numbers from the North American Numbering Plan Administrator (NANPA) for purposes of connecting to the PSTN. Accordingly, all carriers could participate in the establishment of a connection charge priced to include switching and transport costs within the local exchange service area of the carrier. The connection charge would be presented as a tariff charge by each carrier (subject to pooling for those carriers wishing to do so), would not exceed the national average retail rate for a standard single line business line, and would be applied on DS0-level of capacity. The purpose of establishing a ceiling for a connection charge tied to a nationwide average single line business rate would be to eliminate any wholesale/retail arbitrage between what carriers pay for connecting to another carrier's network and the charge paid by retail business customers for a similar connection (consider what Internet service providers (ISPs) pay under today's intercarrier compensation regimes).

For participating carriers that have not raised their subscriber line charges to the existing capped levels, any remaining switched access charge or reciprocal compensation revenues not recovered via the connection charge established would be recovered first by increasing SLC charges to the existing capped levels. Carriers choosing not to increase their monthly SLCs would not be able to recover any difference from the bulk-billed access charge mechanism or HCCF. Any previous amounts of switched access and reciprocal compensation revenue not recovered through an increase in SLC charges and connection charges would be recovered via the HCCF.

For carriers that are rate-of-return regulated in the interstate jurisdiction, a connection charge would be developed in the same manner as previously described above for participating price-cap carriers. As most rate-of-return carriers already reflect monthly SLC charges up to the maximum allowed SLC caps, any base period switched access, special access and reciprocal compensation revenue not recovered through the monthly connection charge would flow to the HCCF.

With regard to special access rate elements and charges, the CCAP is in agreement with the recommendation contained in the ARIC FACTS plan to create parity between intrastate and interstate special access rates. As such, to the extent that existing intrastate special access rates are greater than interstate special access rates, the intrastate rates would be reduced over a reasonable transition period to be in parity with interstate special access rates, and any residual special access rate revenues would be recovered through the HCCF. As interstate special access rates are calculated by NECA on an annual basis and reflect the embedded costs of those carriers participating in the pooling process, interstate special access rates would not be reduced to intrastate special access rates if a carrier's existing state special access rates were lower than its interstate special access rates.

The CCAP believes that capacity-based connection charges utilized for the delivery of traditional exchange access traffic should be reflected in a tariff that is filed with the Commission similar to how switched and special access rates are reflected today. Capacity-based connection charges utilized for the delivery of traffic subject to section 251(b)(5) of the Act should continue to be subject to interconnection agreements. Regardless of how capacity-based charges are reflected, either via tariff or interconnection agreements, the rates charged to a carrier seeking connection to another carrier's network would be the same. Accordingly, if an IXC requires a DS1 level of capacity on an ILEC's network, the price it would pay for a DS1 connection via tariff would be the same rate paid by a CLEC for a DS1 level of capacity to terminate section 251(b)(5) traffic via an interconnection agreement.

From a tariff perspective, the CCAP suggests that capacity-based connection charges for carriers participating in the pooling process be established consistent with the existing levels of capacity currently found in NECA's Tariff F.C.C. No. 5. As such, connection charges would be established at the following levels of capacity: DS0, DS1, DS3, OC-3 and OC-12. In addition, the connection charges would be priced on both a one-way and two-way basis.

Capacity-based connection charges would be priced to include the carrier's cost for end-office local switching and interoffice transport. The CCAP believes that an appropriate rate design can be established that would combine a carrier's embedded cost of local switching with representative amounts of transport-related costs. In the alternative, a rate design could be established that reflects separate, capacity-based charges for switching and transport. While capacity-based connection charges would be considered flat rate charges, they would recover underlying embedded costs that are traffic sensitive in nature. The CCAP believes that switching costs and transport costs remain traffic sensitive in nature. From a capacity-based rate structure perspective, to the extent that connecting carriers require more capacity to reach another carrier's network, they would be required to order additional units of capacity. Separate capacity charges for connection to a LEC's network and interoffice facilities would be similar to the Port and Link capacity components identified in the EPG Plan.[11] Ultimately, the rate design for capacity-based connection charges could be developed by NECA and the associated revenues collected from carriers could be pooled and subject to the existing unitary rate-of-return.

C. Connection Charges and Common Trunks

Today, many ILECs do not have direct connections with IXCs and other carriers such as CMRS providers and CLECs. Instead, most IXCs and other carriers choose to interconnect indirectly with rural ILECs through a tandem provider, usually an RBOC. For purposes of determining the billing of terminating access to IXCs, subtending ILECs must rely on records provided by the tandem provider indicating terminating usage by IXC. With regard to CMRS and CLEC traffic delivered to subtending ILECs via a tandem, the subtending ILEC is dependent on the tandem provider for the appropriate records by which to bill the appropriate carriers under existing intercarrier compensation mechanisms. Conversely, in a capacity-based intercarrier compensation regime, the need for the tandem provider to provide a subtending ILEC with minutes-of-use-based records for billing purposes is no longer necessary. Instead, the CCAP recommends that the tandem provider become the default purchaser of the appropriate number of capacity-based connections into the subtending ILEC's network for purposes of originating and terminating IXC, CMRS and CLEC usage. By making the tandem provider the default

[11] *See* FNPRM at para. 47.

purchaser of connections into the network of a subtending ILEC, the ILEC will have some assurance of being compensated by all carriers seeking to use the ILEC's network. In addition, network efficiencies would be gained since the tandem operator would only order the appropriate number of connections to an ILEC's network.

From the tandem provider's perspective, the cost of buying connections into the network of subtending carriers can be incorporated into an access tandem connection (ATC) fee that would reflect the price charged to other carriers utilizing the tandem provider's switching and transport facilities. Accordingly, the tandem provider would assess the ATC fee associated with the cost of purchasing connections into the network of a subtending ILEC along with any capacity charges the tandem provider seeks for access to its network. To the extent a tandem provider chooses not to charge other carriers for the use of its tandem facilities, the tandem provider would be responsible for paying a subtending ILEC for the number of connections ordered in accordance with the tariff rates.

D. Utilization of An Embedded Cost Standard

The CCAP believes that an embedded cost methodology is the only acceptable and realistic standard that should be applied with regard to the development of capacity-based connection charges and the HCCF. The Commission should reject use of any non-embedded costing methodology suggested in the plans filed and included in the FNPRM. Under today's intercarrier compensation (access charge) regime, interstate access charges established for LECs subject to rate-of-return regulation are based on embedded costs based on the Commission's Part 32 accounting rules, Part 36 separations rules and Part 69 access rules. After accounting for any non-regulated activities in accordance with Part

64 of the Commission's rules, carriers subject to rate-of-return regulation are left with the actual costs associated with maintaining their operations.

With respect to the additional cost standard applicable to Section 251(b)(5) traffic, the standard is one that relies on a forward-looking cost methodology. To date, the CCAP is hard-pressed to find a consistent definition as to how an additional cost is determined. Unlike the existing Part 32, Part 36 and Part 69 rules and procedures, there are no specific rules to follow or defined standards in order to determine the level of additional costs required to meet the definition found in the Act. In negotiating interconnection agreements with CMRS providers and CLECs, the lack of consistent standards and procedures for calculating incremental costs based on a forward-looking cost methodology precludes many ILECs from attempting to undertake such a study.

Accordingly, the CCAP believes that an embedded standard should be utilized in the calculation of capacity-based connection charges for both exchange access and traffic subject to Section 251(b)(5). Interconnection agreements currently in place and based on a forward-looking cost methodology should not be disturbed. As most of the industry plans contained in the FNPRM call for the establishment of different cost standards, the CCAP recommends that the Commission adopt continued use of an embedded cost standard for rate-of-return LECs in establishing connection charges. With respect to the additional cost standard contained in section 252 of the Act, the CCAP believes that the Commission should forebear from applying the additional cost standard to rate-of-return ILECs.

E. Establishment of a High-Cost Connection Fund

Many of the plans described in the FNPRM contain a mechanism whereby any existing intercarrier compensation related revenues not recovered under a revised intercarrier compensation regime can be recovered through an existing or new universal service type mechanism or a bulk-billed access charge. The primary purpose of these mechanisms is to maintain revenue neutrality as the industry transitions to a new and unified intercarrier compensation regime.

The CCAP believes that transition to a new, unified intercarrier compensation regime should be accomplished on a revenue neutral basis. While the CCAP does not advocate an increase in the existing SLC caps, the CCAP does believe that any current access revenues and reciprocal compensation revenues not recovered through capacity-based connection charges should be recovered through a bulk-billed access charge or HCCF. In addition, the CCAP does not believe that the Commission should establish any type of means test in order to determine if carriers subject to rate-of-return regulation should be able to obtain funds from the HCCF. Since unified capacity charges and the HCCF would become new components within a unified pooling structure administered by NECA and subject to the unitary rate-of-return pursuant to existing FCC rules, a separate means test applied to carriers participating in the pool would not be necessary.

The HCCF would not be considered part of the existing high-cost universal service funding mechanisms. Rather, the HCCF would become a unified cost recovery component similar to the other capacity-based charges to be included in a tariff filed and maintained by NECA. As such, the HCCF would not be portable to competitive ETCs

(CETCs). Carriers eligible for HCCF would receive funding based on a total revenue requirement amount, not on a per-line basis.

In addition to reflecting any unified residual amounts not recovered via capacity-based connection charges, the HCCF would include any existing state high-cost or bulk-billed access charge funds created for the purpose of reducing intrastate switched access and special access rates. In addition, the CCAP maintains that existing interstate cost recovery amounts currently reflected in the high-cost LSS, ICLS and any interstate access support (IAS) remaining after participating carriers raise their SLCs to the existing capped levels, be included in the HCCF. The LSS and ICLS represent actual interstate embedded costs of rate-of-return ILECs that, as a result of decisions made in the Commission's MAG order[12] were identified as implicit support and incorporated into the high-cost universal service mechanisms. For non rate-of-return carriers that are willing to subscribe to existing Part 32 accounting rules and participate in the pooling process, the amount of IAS associated with such carriers representing access-related costs that were reduced as a result of the Commission's CALLS order[13] can be included in the HCCF. The CCAP believes that amounts currently reflected in the LSS, ICLS and IAS mechanisms are no different in origin than the residual embedded cost recovery amounts

[12] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244 (2001) (MAG Order).

[13] *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long Distance Users*, CC Docket No. 99-249, Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962 (2000) (*CALLS Order*), *aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Util. Counsel et al. v. FCC*, 265 F.3d 313 (5th Cir. 2001), *cert. denied, National Association of State Utility Consumer Advocates v. FCC*, 535 U.S. 986 (2002); *on remand, Access Charge Reform; Price Cap Performance Review for LECs; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-262, 94-1, 99-249 and 96-45, Order on Remand, 18 FCC Rcd 14976 (2003).

that will flow into the HCCF. The CCAP believes that the manner in which LSS and ICLS amounts are currently calculated should remain unchanged. Once determined, LSS, ICLS and IAS amounts are to be included in the HCCF and made available to carriers electing to participate in the pool. Such amounts would not be made portable to CETCs.

F. Funding of a High-Cost Connection Fund

The CCAP is very concerned about the sustainability of revenues as a basis for determining funding of the existing universal service mechanisms. Currently, the end-user customer surcharge exceeds 11% and as interstate and international revenues decline, the CCAP is concerned that the surcharge will continue to increase and ultimately threaten the viability of the existing universal service mechanisms.

The CCAP believes that the HCCF should be funded in a more competitively-neutral manner since it represents the above average cost of connecting to the PSTN. Accordingly, the CCAP believes that funding for the HCCF should be based on activated numbers that a carrier has received from NANPA. Since all carriers receiving numbers from NANPA would be utilizing the PSTN, funding of the HCCF based on activated numbers accomplishes the Commission's goal of competitive neutrality. Carriers would be able to pass any surcharge assessed on working numbers through to their customers. The CCAP anticipates that the average end user customer would pay less in monthly federal universal service charges than what he pays today. The CCAP recommends that the high-cost loop fund continue to be funded based on revenues but that the base of revenues be expanded to include both state, interstate and international revenues.

IV. Implementation Issues

The CCAP believes that a capacity-based intercarrier compensation regime can be designed, implemented and remain viable as emerging technologies are used with greater frequency to deliver voice communications traffic. All minutes of use will not disappear overnight from the PSTN and become data packets in an all-IP-based network. However, there is a real threat that large-volume users could abandon the PSTN quickly due to the pricing advantages currently afforded IP-based service providers. It is apparent that two types of networks will continue to evolve and coexist. Given the fact that some carriers will be experiencing a loss in traditional, circuit-based minutes of use at a faster pace than others due to the advent of new technologies such as Internet Protocol, the Commission must provide an opportunity for such carriers to move to a capacity-based intercarrier compensation quickly.

A. Length of a Transition Period

The CCAP believes that any reform of the existing intercarrier compensation regimes should take place over a three-to-five-year period and be able to function alongside any changes to the universal service mechanisms recommended by the Joint Board and adopted by the Commission as well as any decisions made by the Commission in the IP-Based Services proceeding. A five-year transition period would be consistent with transition periods implemented in previous reform efforts undertaken by the Commission.[14] Within whatever transition period is adopted by the Commission with

[14] *See e.g., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 11538 (2004) at para. 5 (noting that in the RTF proceeding, the Commission "took steps to rebase and modify the high-cost support mechanism during the plan's five-year life, providing rural carriers with certainty and stability and enabling them to continue to provide supported services at affordable rates to consumers"); CALLS Order at para. 58 (in the CALLS Order, the rate structure component is mandatory for all price cap LECs, for five years).

regard to intercarrier compensation reform, participating carriers should be provided with the ability to make an annual election to move entirely to a capacity-based intercarrier compensation regime. Once a carrier elects to move to a capacity-based intercarrier regime, the carrier may not return to a minutes-of-use-based intercarrier compensation regime. The CCAP recommends that such an election work in a similar fashion to the election process that carriers can currently avail themselves if they wish to move from rate-of-return regulation to price cap regulation.[15]

B. The Transition Process

The CCAP agrees with the principle put forth by NARUC that all carriers should move to a capacity-based intercarrier compensation mechanism at the end of a five-year transition period. At some point within a five-year transition period, NARUC recommends that the Commission refer issues associated with movement to a capacity-based intercarrier compensation regime to a Federal State Joint Board. While the CCAP does not object to a Joint Board being convened for purposes of moving towards a mandatory capacity-based intercarrier compensation regime, the CCAP believes that the Commission can implement some interim processes that would give those carriers wishing to transition to a capacity-based intercarrier compensation regime the ability to do so.

As previously stated, any meaningful reform to the existing intercarrier compensation regimes ultimately rests with the ability of the Commission to unify the intrastate and interstate access regimes. In the FNPRM, the Commission seeks comment on a proposal to reduce the existing interstate composite switched access charge rate to

15 *See, e.g.,* 47 C.F.R. § 36.3(b).

$0.0095 per minute as mandated for price cap carriers in the CALLS order.[16] Currently, the existing interstate composite switched access charge rate is approximately $0.02 per minute.[17] The CCAP does not believe that it would be prudent for the Commission to decrease the composite, per-minute interstate switched access rate to a level that is well below the actual embedded cost as calculated by NECA in accordance with existing Commission rules and procedures. In addition, introduction of a $0.0095 per-minute rate in the interstate jurisdiction without any corresponding decrease in intrastate access rates would create additional incentives for carriers purchasing switched access service from rate-of-return carriers to further arbitrage the existing difference between state and interstate switched access charge rates.

Assuming that the Commission ultimately obtains jurisdiction over intrastate access charges, the CCAP recommends that intrastate switched access rates be reduced to interstate switched access rate levels. As part of the reduction in intrastate switched access rates to interstate switched access rates, the CCAP further recommends that any intrastate revenues derived from a per-minute carrier common line rate be moved to the existing ICLS mechanism and that intrastate revenues derived from a per-minute local switching rate be moved to the LSS mechanism. The remaining intrastate transport-related charges could be incorporated into the calculation of a unified transport charge and retained as part of a unified pooling process administered by NECA. Annual growth in the intrastate revenues transitioned to the LSS, ICLS and capacity-based transport rates would be calculated based on annual growth in the carrier's interstate revenue requirements. In the event that a carrier's interstate revenue requirement decreased in

16 *See* FNPRM at para. 112.

17 *See* NECA F.C.C. Tariff No. 5.

any given year, the associated state revenue components that would remain separately identifiable would also decrease. A company choosing to move to a capacity-based intercarrier compensation regime may elect to remain in the unified NECA pool or could choose to file its own capacity-based rates with the FCC in accordance with existing Commission rules.[18]

V. <u>The Impact of Reform on Subscribers</u>

Ultimately, the Commission should judge the effectiveness of any plan to reform the existing intercarrier compensation regimes by the plan's impact on the consuming public. In doing so, the Commission must recognize that all customers will not have immediate access to the vast array of services being offered by wireline providers, wireless providers, CATV companies and others. In fact, certain groups of customers may never have access to IP-based services provided by CATV companies as these companies have made economic decisions not to construct facilities throughout entire markets, particularly those markets served by the most rural of ILECs.

A. <u>Need to Maintain Viable Long Distance Competition in Rural Markets</u>

In the FNPRM, the Commission seeks comment on the impact of lower access charges on the retail toll charges paid by customers and whether lower access charge rates will entice more IXCs to offer their plans in rural markets. The CCAP is very concerned that just the opposite situation may occur. The CCAP believes that larger, nationwide IXCs have no interest in serving rural areas where the average customer may not generate a significant amount of toll calls. With the largest stand-alone IXCs

[18] *See* 47 C.F.R. §§ 61.38 & 61.39.

currently in the process of being purchased by certain RBOCs,[19] it remains to be seen if the IXCs will continue to offer their basic calling plans in the areas served by rural ILECs. While the traditional excuse for not providing their plans to rural customers has been the high switched access rates charged by rural carriers, the CCAP believes the answer is more fundamental. IXCs just do not see a growth business in serving rural customers in areas served by rural carriers.

The situation is not restricted only to the largest IXCs. The CCAP fears that the RBOCs will soon begin refusing to offer their toll services in the areas served by rural carriers.[20] In the end, rural customers may be left with only one telecommunications provider for their long distance calling needs - the local telephone company. The Commission must insure that a competitive long distance market continues to exist as it undertakes reform of the intercarrier compensation regime. The Commission should insure that the existing dialing parity, rate averaging and rate integration rules remain in place so that those IXCs currently offering long distance service to customers served by rural carriers continue to do so. In addition, the Commission should also rule that any reduction in switched access charges resulting from changes made to the existing intercarrier compensation regime be passed along to retail end user customers on a dollar-for-dollar basis.

[19] *See, e.g.*, *Commission Seeks Comment on Application for Consent to Transfer of Control Filed by SBC Communications, Inc. and AT&T Corp.*, WC Docket No. 05-65, Public Notice, DA 05-656, rel. Mar. 11, 2005; *Commission Seeks Comment on Applications for Consent to Transfer of Control Filed By Verizon Communications Inc. and MCI, Inc.*, WC Docket No. 05-75, Public Notice, DA 05-762, rel. Mar. 24, 2005.

[20] *See* Michigan Public Service Commission, *In the Matter of the application of the Michigan Exchange Carriers Association, Inc. to determine if SBC's discontinuance of toll service in the exchanges of Hiawatha Telephone Company, Midway Telephone Company, Ontonagon County Telephone Company, and Chippewa County Telephone Company is authorized pursuant to the Michigan Telecommunications Act*, MPSC Case No. U-14100, Application filed by the Michigan Exchange Carrier's Association April 2, 2004.

B. <u>The Transiting Function Must Be Regulated</u>

The Commission must determine that transiting is a function subject to regulation and at rates that are cost-based, not market-based. The CCAP believes that while indirect interconnection may be an alternative means for carriers to interconnect, especially for small levels of traffic, it should not impose an additional financial obligation on rural ILECs to deliver traffic, subject to reciprocal compensation or exchange access, beyond the rural ILEC's certificated local service area or existing meet points. Today, CLECs, CMRS providers and IP-based service providers seek interconnection agreements with tandem providers, in many cases an RBOC, to exchange traffic. Typically, such agreements do not include those ILECs that subtend the RBOC tandem. As such, traffic originated by the retail customer of a CLEC, CMRS or IP-based provider destined for a customer served by a subtending ILEC needs to transit the facilities of the RBOC in order to reach the ILEC customer. In such situations, a transiting fee is usually paid to the RBOC by the CLEC, CMRS or IP-based service provider. The Commission must regulate this very important function to ensure that large carriers do not unfairly use their ever-increasing market power to harm smaller carriers and their customers.

Unfortunately, the bilateral interconnection agreements made between RBOCs and other parties impose an implicit obligation on subtending ILECs for a 251(b)(5)-type call originated by the ILEC's customer to a CMRS, CLEC or IP-based provider that has established an out-of-area point of interconnection (POI). Under a capacity-based intercarrier compensation regime, the tandem provider would sell sufficient capacity to CMRS, CLECs and IP-based providers for traffic destined for the subtending ILEC customer. The charges levied for such capacity would include the tandem provider's transit-related charges to deliver traffic to, and receive traffic from, the ILEC customer.

VI. Conclusion

The CCAP urges the Commission to adopt a capacity-based intercarrier compensation regime. A flat-rated, capacity-based intercarrier compensation regime would be easy to administer and would help ensure continued preservation of the PSTN by all carriers in an equitable manner. Moreover, a long-term and viable intercarrier compensation regime would ensure that all Americans continue to have access to affordable basic local exchange service and would continue to support and encourage the development of technology and advanced telecommunications services.

THE COALITION FOR CAPACITY-BASED ACCESS PRICING

[SEE LIST OF COMPANIES IN ATTACHMENT A]

Respectfully Submitted by their Attorney

/s/ M. John Bowen, Jr.
M. John Bowen, Jr.
Margaret M. Fox
McNair Law Firm, PA
Post Office Box 11390
Columbia, South Carolina 29211
Telephone: (803) 799-9800
Facsimile: (803) 753-3219
Email: jbowen@mcnair.net; pfox@mcnair.net

May 23, 2005

ATTACHMENT A

THE COALITION FOR CAPACITY-BASED ACCESS PRICING
Participating Companies

Bluffton Telephone Company, Inc.

Chesnee Telephone Company

Chester Telephone Company

Farmers Telephone Cooperative, Inc.

Hargray Telephone Company, Inc.

Home Telephone Company, Inc.

Horry Telephone Cooperative, Inc.

Lockhart Telephone Company

North State Telephone Company

Palmetto Rural Telephone Cooperative, Inc.

Piedmont Rural Telephone Cooperative, Inc.

PBT Telecom

Ridgeway Telephone Company

Sandhill Telephone Cooperative, Inc.

West Carolina Rural Telephone Cooperative, Inc.